TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

NO. 168.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

MONROE SALISBURY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED MAY 16, 1891.

(14643.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 168.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

MONROE SALISBURY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Complaint	1	1
Exhibit A, contract	19	5
statement of account	35	11
Exhibit B, subcontract	37	12
Exhibit C, affidavit of contractor	40	12
Exhibit D, statement	41	13
Summons	44	14
Marshal's return	45	15
Demurrer	46	15
Order sustaining demurrer	50	16
Judgment	52	17
Clerk's certificate to judgment roll	54	17
Clerk's certificate to record	55	18
Writ of error	57	18
Citation	59	19
Proof of service of citation	60	19

1 *Complaint.*

In the United States circuit court, ninth circuit, district of California.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
MONROE SALISBURY, DEFENDANT.

The United States of America, the plaintiff above named, by its attorney, S. G. Hilborn, esq., complains of 'gainst Monroe Salisbury, the defendant herein, and for cause of complaint shows the court.

I.

That on the 15th day of March, 1878, one O. J. Salisbury, as principal, and H. Wadsworth and William K. Sloan, as sureties, entered into a written contract with the plaintiff, acting in that behalf through and by D. M. Key, Postmaster-General, in which said contract the said O. J. Salisbury agreed and undertook, for and in consideration of the sum of
2 $2,500.00 per year, to carry the United States mail upon the route then known as No. 36128, being the route between Silver River, in the Territory of Montana, by way of Cable City, Phillipsburg, Emmettsburg, and New Chicago, and back three times a week, for and during the term of four years, beginning on the 1st day of July, 1878, and ending on the 30th day of June, 1882.

That the said contract was subject to and contained written thereon, among other things, certain conditions, stipulations, and agreements, all of which are contained in copy of said contract hereto annexed, marked Exhibit A, and made a part hereof.

That the said contract, after being duly executed by the said O. J. Salisbury and by the sureties above named, and duly accepted and approved by the plaintiff, through and by said D. M. Key, Postmaster-General,
3 as aforesaid, was and now is on file in the Post-Office Department the United States.

That from the 1st day of January, 1879, the said O. J. Salisbury sublet and subcontracted the carrying of the mail on the said route No. 36128 to the defendant, Monroe Salisbury, as appears by a certain subcontract in writing, duly signed and sealed by the said O. J. Salisbury, of which a copy is hereto annexed, marked Exhibit B, and made a part hereof.

That in pursuance of the contract hereinbefore mentioned between the plaintiff and the said O. J. Salisbury, he, the said O. J. Salisbury, on the 1st day of July, 1878, entered upon the performance of the service therein contracted for in a manner acceptable to this plaintiff, and continued to perform said service until the 1st day of January, 1879; from and after which date last mentioned, the said mail service was performed
4 by the said defendant, Monroe Salisbury, under and by virtue of the subcon ract hereinbefore mentioned. That from and after the 1st day January, 1879, the said subcontract was duly recognized by the Postmaster-General, and from and after said date such sums as were and became due and payable under and by virtue of the original contract between the plaintiff and O. J. Salisbury, as afterwards amended and changed in the manner hereinafter set forth, were paid to the said defendant, Monroe Salisbury.

II.

That for the purpose of facilitating and expediting the service of carrying the United States mail between Silver Bow and New Chicago, and the intermediate places set forth and mentioned in the said contract, the said Postmaster-General by a certain order made on the 24th day of December, 1878, did agree and consent with the said O. J. Salisbury to expedite the said mail service by substituting the schedule of departures and arrivals on the said route on and after the 1st day of January, 1879, and to increase the service on said route from and after said date last mentioned.

That in pursuance of the order made by said Postmaster-General as aforesaid, the running time upon said route was reduced from 30 hours to 23 hours, and an additional sum was allowed for such expedition or increase of speed of $2,500 per annum, said allowance being made in supposed accordance with the provisions of law as contained in section 3961 of the Revised Statutes of the United States.

That by a further provision in the said order the service upon said route was increased from and after January 1st, 1879, four trips per week, and an additional allowance was made therefor of $6,666\frac{66}{100}$ per annum, said allowance being computed pro rata upon the basis of the compensation provided for in the original contract hereinbefore mentioned, as increased by the additional allowance for expedition or increase of speed last above mentioned. That of the said allowance of $6,666.66, a large part, to wit, $3,333.33, was for expedition of service.

III.

That the said O. J. Salisbury consented to the terms and conditions set forth and mentioned in the said order relative to the expediting and increasing of the said service upon the line of said route, and by reason of said agreement and consent to the terms and conditions set forth and mentioned in said order upon the part of the said O. J. Salisbury, the original contract, executed by the said O. J. Salisbury upon the 15th day of March, 1878, was and became amended, altered, and changed, and the said contract so amended, altered, and changed was accepted by the said O. J. Salisbury, and by the defendant, Monroe Salisbury, acting for and under him.

IV.

That the said defendant, Monroe Salisbury, did, by means of certain false and fraudulent representations set forth in a certain sworn statement signed and sworn to by the said defendant, Monroe Salisbury, on the 20th day of December, 1878, and presented to the Postmaster-General, relative to the expediting and facilitating of the service of carrying the mail on the route aforesaid, procure said order made by the said Postmaster-General on the 24th day of December, 1878, thereby amending, altering and changing said original contract.

That the said defendant, Monroe Salisbury, falsely and fraudulently stated and represented in said sworn statement, so made by him and presented to the Postmaster-General, as aforesaid, that for the purpose of performing the mail service three times a week upon said route No. 36128, from Silver Bow to New Chicago, on the then existing sched-

ule of 30 hours, it would require 4 men and 16 horses, and that to perform said service upon a reduced schedule of 23 hours would require 8 men and 32 horses.

That the additional allowances for expedition or increase of speed contained in the said order made by the Postmaster-General, as aforesaid, were made solely upon the basis of the said statement signed and sworn to on the 20th day of December, 1878, by the said defendant, Monroe Salisbury, which said statement was presented by or on behalf of the
9 said defendant to the Postmaster-General, and a copy of which is hereto annexed, marked Exhibit C and made a part of this complaint.

IV.

That the said representations, so made in said sworn statement by the said defendant, Monroe Salisbury, were wholly false and fraudulent in this: That it was therein alleged that to perform the service of carrying the mail on the said route upon the schedule of 30 hours three times per week would require 4 men and 16 horses, and that to perform said service three times per week upon a reduced schedule of 23 hours would require 8 men and 32 horses, thereby making it to appear that the said proposed change of schedule would involve and render necessary an increase in the number of men and horses required to perform
10 said service upon said route of 100 per cent, which said allegation was false, and was designed to mislead and did mislead the Postmaster-General.

Whereas, in truth and in fact, neither the said O. J. Salisbury nor the defendant, Monroe Salisbury, ever required or used any greater number of men or horses in carrying the mail upon said route upon the expedited schedule of 23 hours than were required to perform said service upon the original schedule of 30 hours, nor did the increase of speed upon said route involve or necessitate any increase whatever in the number of men and horses required to perform said service.

That by means of the said statements and representations so falsely and fraudulently made by the said Monroe Salisbury, and by means of false and fraudulent vouchers presented to the Post-Office Depart-
11 ment, the said defendant, Monroe Salisbury, was paid by and received from this plaintiff a larger sum than he was lawfully entitled to receive for the performance of mail service under said contract as amended, altered, and changed as aforesaid. That the sum so received by the said defendant from this plaintiff by means of said statements and representations, so falsely and fraudulently made, and said false and fraudulent vouchers presented to the Post-Office Department, as aforesaid, from the first day of January, 1879, to the 14th day of August, 1882, was $14,931.17; and the said sum so received was in excess of the amount which the said defendant was legally entitled to receive for the service performed by him, the said defendant.

That the said sum of $14,931.17 has been demanded by the plaintiff from the said defendant, but he, the said defendant, has utterly
12 failed, neglected, and refused, and still does fail, neglect, and refuse to pay the said sum or any part thereof.

Wherefore plaintiff demands judgment against defendant for the said sum of $14,931.17, with interest thereon from the 14th day of August, 1882, at the rate of six per centum per annum, together with the costs of this suit.

2ND COUNT.

And for a further cause of action said plaintiff alleges that the said defendant, Monroe Salisbury, on the 14th day of August, 1882, was indebted to the said plaintiff in the sum of fourteen thousand nine hundred and thirty-one dollars and seventeen cents for so much money by the said defendant, before that time had and received to and for the use of the said plaintiff, which said sum of money the said plaintiff avers was
13 then due and payable, yet the said defendant, although often requested so to do, has not paid said sum of money nor any part thereof.

Wherefore plaintiff demands judgment against defendant for the said sum of fourteen thousand nine hundred and thirty-one dollars and seventeen cents, with interest thereon from the 14th day of August, 1882, at the rate of six per centum per annum, together with the costs of this suit.

3RD COUNT.

And for a further cause of action the said plaintiff alleges that from and after the 1st day of July, 1878, up to and including the 30th day of June, 1882, one O. J. Salisbury was the contractor for carrying the United States mail upon the route then known as No. 36128, being the
14 route from Silver Bow, in the Territory of Montana, by way of Cable City, Phillipsburgh, and Emmetsburgh, to New Chicago, and from and after the 1st day of January, 1879, the said defendant, Monroe Salisbury, was the subcontractor under the said O. J. Salisbury for carrying the said mail upon the route aforesaid. That on the 24th day of December, 1878, an order was made by the Postmaster-General, to take effect on the 1st day of January, 1879, expediting the schedule and decreasing the running time for carrying the mail on said route from 30 hours to twenty-three hours, and allowing an additional sum therefor of twenty-five hundred dollars per annum ($2,500.00), in supposed accordance with the provisions of law as contained in section 3961 of the Revised Statutes of the United States.

15 That said order was made solely upon the basis of a certain statement prepared and sworn to by the said defendant on the 20th day of December, 1878, and presented to the Postmaster-General by or on behalf of the said defendant, Monroe Salisbury, a copy of which said statedent is hereto annexed, marked Exhibit C and made a part hereof.

That by a further provision in the said order of the Postmaster-General the service upon said route was increased on and after the 1st day of January, 1879, four trips per week, and an additional allowance was made therefor of $6,666.66 per annum. That of the said allowance last mentioned a large part, to wit, $3,333.33, was for expedition of service. That the said additional allowance made as aforesaid were from and after the 1st day of January, 1879, paid to the defendant Monroe Salisbury
16 by the plaintiff's officers.

The plaintiff further says that the allegations in the said sworn statement, made by the said defendant and presented by or on his behalf

to the Postmaster-General as aforesaid, were false and untrue, as the said defendant then and there well knew, in this: That it was therein alleged that the number of men and horses required to perform the mail service upon the said route, three times per week, upon a schedule of thirty hours, would be 4 men and 16 horses, and that upon the proposed schedule of twenty-three hours to perform the same service it would require 8 men and 32 horses; thereby making it to appear that an increase would be required in the number of men and horses necessary to perform the mail service upon the said route, by reason of the change of
17 schedule aforesaid, of four men and sixteen horses, or one hundred per cent. Whereas, in truth and in fact, there was no increase whatever in the number of men and horses required or actually used in performing said mail service upon the schedule of twenty-three hours over and above the number required and used in performing said service upon the schedule of thirty hours.

And the said false allegations were designed to mislead and did mislead the Postmaster-General.

And the plaintiff further says that by reason of the said false allegations in the statement aforesaid, the plaintiff's officers were induced to pay the moneys aforesaid from time to time, between the first day of January, 1879, and the 14th day of August, 1882, amounting in the
18 aggregate to the sum of $14,931.17 which sum was paid by the plaintiff's officers to the defendant, as above set forth, in mistake of fact, and was received by the said defendant contrary to the provisions of section 3961 of the Revised Statutes of the United States. Said payments are more fully at length set out in the statement hereto annexed, marked Exhibit D and made a part of this complaint. Said exhibit also shows the amount which said defendant was lawfully entitled to receive upon the basis of the stock and carriers actually employed.

Wherefore plaintiff demands judgment against the defendant for the said sum $14,931.17, with interest thereon from the 14th day of August, 1882, at the rate of six per centum per annum, together with the costs of this suit.

S. G. HILBORN,
United States Attorney.
GEO. L. DOUGLASS,
Of Counsel.

19 *Exhibit A.*

POST-OFFICE DEPARTMENT,
Washington, D. C., Oct. 3rd, 1884.

I certify that the annexed is a true copy taken from the files and records of this Department.

In testimony whereof I have hereto set my hand and caused the seal of the Post-Office Department to be affixed, the day and year above written.

[SEAL.] H. D. LYMAN,
Acting Postmaster-General.

United States of America. Salt Lake City Co., Utah.

No. 36128. $2,500 per annum.

This article of contract, made the 15th day of March, eighteen hundred and seventy-eight, between the United States of America (acting in
20 this behalf by the Postmaster-General) and O. J. Salisbury, contractor [insert here names of sureties and their P. O. address], and H. Wadsworth, of San Francisco, Cal., and Wm. K. Sloan, of Hilliard, Wyone, as his sureties.

Witnesseth, That whereas O. J. Salisbury has been accepted, according to law, as contractor for transporting the mail on route No. 36128 from Silver Bow, Mont., by Cable City, Phillipsburgh, and Emmettsburg, to New Chicago and back three times a week by a schedule satisfactory to the Department, at two thousand five hundred dollars per year, for and during the term beginning July first, eighteen hundred and seventy-eight, and ending June thirtieth, eighteen hundred and eighty-two. Now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant, and agree with the United State of America, and do bind themselves—

21 1st. To carry said mail with certainty, celerity, and security, using therefor such means as may be necessary to transport the whole of said mail, whatever may be its size, weight, or increase, during the term of this contract, and within the time fixed in the annexed schedule of departures and arrivals; and so to carry until said schedule is altered by the authority of the Postmaster-General of the United States, as hereinafter provided, and then to carry according to such altered schedule; and in all cases to carry said mail in preference to passengers and freight, and to their entire exclusion if its weight, bulk, or safety shall so require.

And that they will carry the mail, upon demand, by any conveyance which said contractor regularly runs, or is concerned in running, on the route beyond the number of trips above specified, in the same man-
22 ner and subject to the same regulations as are herein provided touching regular trips

2nd. To carry the mail in a safe and secure manner, free from wet or other injury, under a sufficient oilcloth or bearskin if carried on a horse, and in a boot under the driver's seat if carried in a coach or other vehicle.

3rd. To take the mail and every part thereof from and deliver it and every part thereof at each post-office on the route, or that may hereafter be established on the route (or on any route that may hereafter be established and to which this contract may be extended as hereinafter provided), and into the post-office at each end of the route and into the post-office, if one is there kept, at the place at which the carrier stops for the
23 night, and if no post-office is there kept, to lock it up in some secure place, at the risk of the contractor.

They also undertake, covenant, and agree with the United States of America, and do bind themselves, jointly and severally, as aforesaid, to be accountable and answerable in damages for the person to whom the said contractor shall commit the care and transportation of the mail, and his careful and faithful performance of the obligations assumed herein and those imposed by law, not to commit the care or transportation of the

mail to any person under sixteen years of age; to discharge any carrier of said mail whenever required so to do by the Postmaster-General; not to transmit by themselves, or either of them, or either of their agents, or be concerned in transmitting, commercial intelligence more rapidly
24 than by mail; not to carry, otherwise than in the mail, letters, packets, or newspapers which should go by mail, or convey or transport any person engaged in carrying letters, packets, or newspapers which should go by mail; to carry post-office blanks, mail locks and bags, and other postal supplies, and also the special agents of the Department on the exhibition of their credentials, if a coach or other suitable conveyance is used, without additional charge; to collect quarterly, if required by the Postmaster-General, of postmasters on the route, the balances due from them to the United States on their quarterly returns, and faithfully to render an account thereof to the Postmaster-General in the settlement of the quarterly accounts of said contractor, and to pay over to the
25 Auditor of the Treasury for the Post-Office Department, on the order of the Postmaster-General, all balances remaining in his hands.

For which services, when performed, the said O. J. Salisbury, contractor, is to be paid by the United States the sum of two thousand five hundred dollars a year, to-wit: Quarterly, in the months of November, February, May, and August, through the postmasters on the route, or otherwise, at the option of the Postmaster-General; said pay to be subject, however, to be reduced or discontinued by the Postmaster-General, as hereinafter stipulated, or to be suspended in case of delinquency.

It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster-General may discontinue or extend this contract, change the schedule and termini of the route, and alter, increase,
26 decrease, or extend the service, in accordance with law, he allowing a pro rata increase of compensation for any additional service thereby required, or for increased speed, if the employment of additional stock or carriers is rendered necessary; and, in case of decrease, curtailment, or discontinuance of service, as a full indemnity to said contractor one month's extra pay on the amount of service dispensed with, and a pro rata compensation for the service retained. Provided, however, That, in case of increased expedition, the contractor may, upon timely notice, relinquish the contract.

It is hereby also stipulated and agreed by the said contractor and his sureties as aforesaid that they shall forfeit—

1. The pay of a trip when it is not run, and, in addition, if no sufficient excuse for the failure is furnished an amount not more than three times the pay of the trip.

27 2. At least one-fourth of the pay of a trip, when the running is so far behind time as to fail to make connection with a depending mail.

3. For violating any of the foregoing provisions touching the transmission of commercial intelligence more rapidly than by mail; or giving preference to passengers or freight over the mail or any portion thereof, or for leaving the same for their accommodation; or carrying, otherwise than in

the mail, matter which should go by mail, or transporting persons engaged in so doing, with knowledge thereof, a penalty equal to a quarter's pay.

4. For violating any other provisions of this contract touching the carriage of the mails, or the time and manner thereof, without a satisfactory explanation of the delinquency, in due time, to the Postmaster-
28 General, a penalty in his discretion. That these forfeitures may be increased into penalties of a higher amount, in the discretion of the Postmaster-General, according to the nature or frequency of the failure and importance of the mail: Provided, that except as herein otherwise specified and except as provided by law, no penalty shall exceed three times the pay of a trip in each case.

And it is hereby further stipulated and agreed by the said contractor and his sureties that the Postmaster-General may annul the contract for repeated failures; for violating the postal laws; for disobeying the instructions of the Post-Office Department; for refusing to discharge a carrier when required by the Department; for transmitting commercial intelligence or matter which should go by mail, contrary to the stipula-
29 tions herein; for transporting persons so engaged, as aforesaid; whenever the contractor shall become a postmaster, assistant postmaster, or Member of Congress, and whenever, in the opinion of the Postmaster-General, the service can not be safely continued, the revenues collected, or the laws maintained on the road or roads herein.

And it is hereby further stipulated and agreed that such annulment shall not impair the right to claim damages from said contractor and his sureties under the contract; but such damages may, for the purpose of sett-off or counter-claim, in the settlement of any claim of said contractor or his sureties against the United States, whether arising under this contract or otherwise, be assessed and liquidated by the Auditor of the Treasury for the Post-Office Department.

30 And it is hereby stipulated and agreed by the said contractor and his sureties that this contract may, in the discretion of the Postmaster-General, be continued in force beyond its express terms for a period not exceeding six months, until a new contract with the same or other contractors shall be made by the Postmaster-General.

And this contract shall, in all its parts, be subject to the terms and requirements of the act of Congress approved April twenty-first, one thousand eight hundred and eight, entitled "An act concerning public contracts," and of the act of Congress approved June eighth, one thousand eight hundred and seventy-two, entitled "An act to revise, consolidate, and amend the statutes relating to the Post-Office Department."

In witness whereof, the said Postmaster-General has caused the
31 seal of the Post-Office Department to be hereto affixed, and has attested the same by his signature, and the said contractor and his

sureties have hereunto set their hands and seals the day and year set opposite their names, respectively.

D. M. KEY,
Postmaster-General.

Signed, sealed, and delivered by the Postmaster-General, in the presence of—

J. N. DORRIS.

And by the other parties hereto, in the presence of—

L. CARNER,
L. R. NETTRE,
Witnesses.

Signed this 25th day of March, 1878. O. J. SALISBURY, [SEAL.]
Contractor.

Signed this " day of " 1878. H. WADSWORTH, [SEAL.]
Signed this " day of " 1878. WM. K. SLOAN, [SEAL.]
Sureties.

POST-OFFICE, SALT LAKE CITY, UT.,
April 12, 1878.

I hereby certify that H. Wardsworth, of San Francisco, Cal., and W. K. Sloan, of Hilliard, Wyoming, are good and sufficient sureties for the amount of the foregoing contract.

JNO. T. LYNCH,
Postmaster.

32 The schedule of departures and arrivals:

Leave Silver Bow Mon., Wed., & Fri. at 6 a. m.
Arrive at New Chicago next day by 12 m.
Leave " " Mon., Wed., & Fri. at 6 a. m.
Arrive at Silver Bow next day by 12 m.

Provided, that when more than seven minutes are taken for opening and closing the mails at any office, the surplus time so taken is to be allowed in addition to the time fixed in this schedule.

Certificate of the oath of mail contractors and carriers, required by act of Congress of June 8, 1872, as amended by act of March 5, 1874, 18th Stats., p. 19.

[Take this oath after signing the foregoing contract.]

I, O. J. Salisbury, being employed in the care, custody, and conveyance of the mail "as contractor on route No. 36,128, from Silver Bow to New Chicago, Ter., Montana, do swear that I will faithfully per-
33 form all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post-office and post-roads within the United States; and that I will honestly and truly account for and pay over any moneys belonging to the said United States which may come into my possession or control.

And I do further solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign or domestic, so help me God.

O. J. SALISBURY,
Contractor.

COUNTY OF SALT LAKE,
Ter. of Utah, ss:

Sworn before the subscriber, a notary public for the county and Ter. aforesaid, this 26th day of March, A. D. 1878; and I also certify that the person above named is above the age of twenty-one years, to the best of my knowledge and belief.

WM. C. HALL, [SEAL.]
Notary Public.

NOTE.—When the oath is taken before a justice of the peace, or any other officer not using a seal, except a judge of a United States
34 court, the certificate of the clerk of a court of record must be added, under his seal of office, that the person who administered the oath is duly qualified as such officer.

Certificate (F). Exhibit A.

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT.

I, R. F. Crowell, Auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct statement from the records of this office of the account of O. J. Salisbury, contractor, for the transportation of the mails on route No. 36128, in Montana Territory, from July 1st, 1878 to June 30th, 1882.

In testimony whereof I have hereunto signed my name, and caused to be affixed my seal of office, at the city of Washington, District of Columbia, this second day of October, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] R. F. CROWELL.
Auditor.

Statement of account.

DR. *O. J. Salisbury, Montana, contractor, in account with the United States.* CR.

Route.			Route.		
36128	To collections 3rd qr. 1878	81.23	36128	By transportation 3rd qr. 1878	625.00
"	" part of warrant favor M. Sailsbury, atty	543.77	"	" " 4th " "	625.00
"	" collections 4th qr. 1878	63.33	"	" " 1st " 1879	2,916.66
"	" part of warrant favor M. Salisbury, atty	561.67	"	" " 2nd " "	2,916.66
"	" deduction 1st qr. 1879	23.97	"	" " 3rd " "	2,916.66
"	" part of warrant favor M. Salisbury, subcontr	2,892.69	"	" " 4th " "	2,916.66
"	" " " " " "	2,916.66	"	" " 1st " 1880	3,156.85
"	" " " " " "	2,916.66	"	" " 2nd " "	3,156.85
"	" " " " " "	2,916.66	"	" remission of deduction	1,535.18
"	" deduction 1st qr. 1880	1,656.19	"	" transportation 3rd qr. 1880	3,156.85
"	" part of warrant favor M. Salisbury, subcontr	1,500.66	"	" remission of deduction	1,578.43
"	" deduction 2nd qr. 1880	1,621.63	"	" transportation 4th qr. 1880	3,156.85
"	" part of warrant favor M. Salisbury, subcontr	1,535.22			
"	" warrant favor M. Salisbury, subcontr	1,535.18			
"	" deduction 3rd qr. 1880	1,578.43			
"	" part of warrant favor M. Salisbury, subcontr	1,578.42			
"	" warrant favor M. Salisbury, subcontr	1,578.43			
"	" deduction 4th qr. 1880	1,054.10			
"	" part of warrant favor M. Salisbury, subcontr	2,102.75			
	Forward	28,657.65		Forward	28,657.65

Route.			Route.		
36128	To am't brought forward	28,657.65	36128	By am't brought forward	28,657.65
"	" deduction 1st qr. 1881	229.82	"	" transportation 1st qr. 1881	3,156.85
"	" part of warrant favor M. Salisbury, subcontr	2,927.03	"	" " 2nd " "	3,156.85
"	" deduction 2nd qr. 1881	34.60	"	" " 3rd " "	3,156.85
"	" part of warrant favor M. Salisbury, subcontr	3,122.25	"	" " 4th " "	2,549.01
"	" deduction 3rd qr. 1881	65.29	"	" one month's extra pay on service dispensed with under orders July 22 and Nov. 1, 1881	75.16
"	" part of warrant favor M. Salisbury, subcontr	3,091.56	"	" transportation 1st qr. 1882	1,295.74
"	" deduction 4th qr. 1881	14.70	"	" one month's extra pay on service dispensed with under orders Jan'y 23, 1882	34.31
"	" part of warrant favor M. Salisbury, subcontr	2,609.47	"	" transportation 2nd qr. 1882	1,249.99
"	" " " " " "	1,330.05			
"	" " " " " "	1,249.99			
"	" warrant No. 4456 N. Y., dated Aug. 14, 1882				
		43,332.41			43,332.41

OFFICE OF THE AUDITOR OF THE TREASURY FOR THE POST-OFFICE DEPARTMENT, *Washington, D. C., October 1st, 1884.*

R. F. CROWELL, *Auditor.*

37 *Exhibit B.*

POST-OFFICE DEPARTMENT,
Washington, D. C., October 7, 1884.

I certify that the annexed is a true copy taken from the files and records of this Department.

In testimony whereof I have hereto set my hand and caused the seal of the Post-Office Department to be affixed the day and year above written.

[SEAL.] FRANK HATTON,
Acting Postmaster-General.

This article of contract, made this 13th day of March, A. D. 1879, between O. J. Salisbury, contractor, with the U. S. Post-Office Department for transporting the mails on route No. 36128, from Silver Bow to New Chicago, Montana Territory, of the one part, and Monroe Salisbury of the other part, witnesseth, that whereas the said Monroe Salis-
38 bury has been accepted by the said O. J. Salisbury, as subcontractor for transporting the U. S. mails on said route No. 36128, from the first day of January, A. D. 1879, to the thirtieth day of June, A. D. 1882; now, therefore, the said Monroe Salisbury doth agree and by these presents hath agreed to transport the U. S. mails on the above-numbered route, and for the period above mentioned, according to the term of his, the said O. J. Salisbury's contract with the Post-Office Department, holding himself, the said Monroe Salisbury, responsible in damages to the said O. J. Salisbury for any fines, penalties, or losses that may result from the violation of the terms of his, the said O. J. Salisbury's, contract with the Post-Office Department.

In consideration of the above agreement of the said Monroe Salisbury, and to enable him, the said Monroe Salisbury, to execute the
39 same, the said O. J. Salisbury doth hereby give, assign, and set over to the said Monroe Salisbury the entire amount of pay that may become due him, the said O. J. Salisbury, as contractor on said route No. 36128, for the period commencing on the first day of January, A. D. 1879, and terminating June thirtieth, A. D. 1882. This contract to bind the heirs and legal representatives of the parties hereto.

Witness our hands and seals this 1st day of March, A. D. 1879.

(Signed) O. J. SALISBURY. [SEAL.]

Witness:

(Signed) H. A. IDDINGS. [SEAL.]

Exhibit C. 36128

POST-OFFICE DEPARTMENT,
Washington, D. C., August 1st, 1883.

I, A. D. Hazen, Acting Postmaster-General of the United States of America, certify that the annexed is a true copy of the original
40 sworn statement on file in this Department.

In testimony whereof I have hereto set my hand and caused the seal of the Post-Office Department to be affixed, at the city of Washington, the day and year above written.

[SEAL.] A. D. HAZEN,
Acting Postmaster-General.

36128.

To perform three-times-a-week service on route No. 36128, from Silver Bow to New Chicago, on the present schedule of 30 hours, it will require 4 men and 16 head of horses, and to perform said service on a reduced schedule of 23 hours it will require 8 men and 32 head of horses.

(Signed) M. SALISBURY.

Sworn to before—

(Signed) JAMES LAWRENSON,
Notary Public.

20 December, 1878.

41 G. F. S., Oct. 7, 1884. *Exhibit D.* Exhibit B.

Route No. 36128. Silver Bow to New Chicago, Montana. Contract term, July 1, 1878, to June 30, 1882.

Contr., O. J. Salisbury; subcontr., M. Salisbury (f'm Jan'y 1, 1879).

Cost of service was as follows:	
From July 1, 1878, to Dec. 31, 1878, @ $2,500.00 p. a	$1,250.00
" Jan'y 1, 1879, " Dec. 31, 1879, " 11,666.66 "	11,666.66
" Jan'y 1, 1880, " Nov. 30, 1881, " 12,627.44 "	24,191.15
" Dec. 1, 1881, " Feb'y 9, 1882, " 5,411.76 "	1,057.19
" Feb'y 10, 1882, " June 30, 1882, " 5,000.00 "	1,944.44
Additional allowance on service dispensed with, viz:	
By order of July 22, 1881, 1 mo's extra pay, @ $901.96 p. a	75.16
" " " Jan'y 23, 1882, 1 " " " " 411.76 "	34.31
Total allowance for service	$40,218.91
The Auditor, settling by quarters, made this am't less by	.11
	40,218.80

Deductions were made as follows:		
Quarter ended Mar. 31, 1879	$23.97	
" " Mar. 31, 1880	1,656.19	
" " June 30, 1880	1,621.63	
" " Sep. 30, 1880	1,578.43	
" " Dec. 31, 1880	1,054.10	
" " Mar. 31, 1881	229.82	
" " June 30, 1881	34.60	
" " Sep. 30, 1881	65.29	
" " Dec. 31, 1881	14.70	
Total deduction		$6,278.73
42 Total deduction bro't for'd		$6,278.73
Remissions were made as follows:		
Quarter ended June 30, 1880	$1,535.18	
" " Sept. 30, 1880	1,578.43	
Total remission		3,113.61
Total deduction not remitted		$3,165.12

RECAPITULATION.

Total allowance for service	40,218.80
Total deduction not remitted	3,165.12
Amount actually paid for service	$37,053.68

Pay on the basis of stock and carriers actually employed would have been as follows:

From July 1, 1878, to Dec. 31, 1878, @	$2,500.00	p. a	$1,250.00
" Jan'y 1, 1879, " Dec. 31, 1879, "	5,833.33	"	5,833.33
" Jan'y 1, 1880, " Nov. 30, 1881, "	6,313.72	"	12,095.58
" Dec. 1, 1881, " Feb'y 9, 1882, "	5,411.76	"	1,057.19
" Feb'y 10, 1882, " June 30, 1882, "	5,000.00	"	1,944.44
Additional allowance on service dispensed with, viz:			
By order of July 22, 1881, 1 mo's extra pay, @	$901.96	p. a	75.16
" " " Jan'y 23, 1882, 1 " " " "	411.76	"	34.31
Total allowance on new basis			$22,290.01

43 Deductions on new basis would have been:

Quarter ended Mar. 31, 1879	$11.98	
" " Mar. 31, 1880	77.76	
" " June 30, 1880	43.20	
" " Dec. 31, 1880	17.28	
" " June 30, 1881	17.28	
Total deduction on new basis		167.50

(No remissions.)

Amount which should have been paid for service 22,122.51

FINAL RECAPITULATION.

Amount actually paid for service	37,053.68
Amount which should have been paid	22,122.51
Amount to be recouped	14,931.17

(Endorsed:) Filed March 4, 1885. L. S. B. Sawyer, clerk.

44 *Summons.*

United States of America. Circuit court of the United States, ninth circuit, district of California.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
MONROE SALISBURY, DEFENDANT.

Action brought in the said circuit court, and the complaint filed in the office of the clerk of said circuit court, in the city and county of San Francisco.

The President of the United States of America, greeting, to Monroe Salisbury:

You are hereby required to appear in an action brought against you by the above-named plaintiff, in the circuit court of the United States, ninth circuit, in and for the district of California, and to file your plea, answer, or demurrer, to the complaint filed therein (a certified copy of which accompanies this summons), in the office of the clerk of said court, in the city and county of San Francisco, within ten days after the service on you of this summons—if served in this county; or if served out of this county, then within thirty days—or judgment by default will be taken against you.

The said action is brought to recover from you the sum of fourteen thousand nine hundred thirty-one $\frac{17}{100}$ dollars, money alleged to have been had

and received by you and paid by said plaintiff to you by reason of your false and fraudulent representations, &c., &c., together with interest thereon from the 14th of August, 1882, at the rate of six per centum per annum and the costs of this action; all of which is more fully set out in the complaint on file herein, to which reference is hereby made, and if you fail to appear and plead, answer, or demur, as herein required, your default will be entered and the plaintiff will take judgment against you for the said sum of $14,931\frac{17}{100}$, together with interest thereon as aforesaid and the costs of this action.

Witness, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fourth day of March, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the 109th.

[SEAL.] L. S. B. SAWYER, *Clerk.*

45 UNITED STATES MARSHAL'S OFFICE,
DISTICT OF CALIFORNIA.

I hereby certify, that I received the within writ on the 13 day of March, 1885, and personally served the same on the 1st day of April, 1885, by delivering to, and leaving with Monroe Salisbury, said defendant named therein personally, at the city and county of San Francisco, in said district, a certified copy thereof, together with a copy of the complaint, certified to by L. S. B. Sawyer, clerk U. S. circuit court, attached thereto,

M. M. DREW,
U. S. Marshal.
By W. L. MCEWEN,
Deputy.

SAN FRANCISCO, *April 1st*, 1885.

(Endorsed:) No. 3627. U. S. circuit court, ninth circuit, district of California. The United States *vs.* Monroe Salisbury. Summons. S. G. Hilborn, plaintiff's attorney. Filed April 1st, 1885. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

46 *Demurrer*

In the United States circuit court, ninth circuit, district of California.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
MONROE SALISBURY, DEFENDANT. } No. 3627.

Now comes the defendant, Monroe Salisbury, and demurs to the complaint of plaintiff, filed herein, and specifies as grounds of demurrer:

1st. That the complaint does not state facts sufficient to constitute a cause of action against this defendant.

That the first cause of action therein attempted to be set out does not state facts sufficient to constitute a cause of action against this defendant.

That the second cause of action therein attempted to be set out
47 does not state facts sufficient to constitute a cause of action against this defendant.

That the third cause of action therein attempted to be set out does not state facts sufficient to constitute a cause of action against this defendant.

2d. That there is a defect of parties defendant in the first cause of action in said complaint attempted to be set out in this: That if any cause of action exists against this defendant, O. J. Salisbury, who is alleged in said complaint to have entered into a certain contract with the plaintiff herein on the 15th day of March, 1878, should be joined with this defendant as a party defendant herein.

That there is a defect of parties defendant in the third cause of action in said complaint attempted to be set out in this: That if any cause
48 of action exists against this defendant, one O. J. Salisbury, who is alleged in said complaint to have been the contractor upon the certain mail route set out and designated in said complaint, should be joined with this defendant as a party defendant herein.

3d. That the first cause of action attempted to be set out in said complaint is ambiguous, unintelligible, and uncertain in this:

(A) That it does not appear from said complaint what false and fraudulent vouchers, if any, were presented to the post-office, nor does it appear therefrom in any way, how, or in what manner, or by whom, such false and fraudulent vouchers were made, if made at all, or were presented to said Post-Office Department, if presented at all.

49 (B) That it does not appear from said complaint, or at all, how, or in what manner, the sum of $14,931.17 is or was in excess of the amount the defendant was legally entitled to receive from the plaintiff for services admitted to have been performed.

Wherefore the said defendant prays judgment to be dismissed thence without day and for his costs.

E. B. YOUNG,
Attorney for Defendant.

I hereby certify that, in my opinion, this demurrer is well founded in points of law.

E. B. YOUNG,
Attorney for Defendant.

(Endorsed:) Due service of the within demurrer and receipt of a copy thereof admitted this 10th day of July, A. D. 1885. S. G. Hilborn, attorney for plaintiff. Filed, July 10, 1885. L. S. B. Sawyer, clerk.

50 *Order sustaining demurrer.*

At a stated term, to wit, the July term, A. D. 1890, of the circuit court of the United States of America of the ninth judicial circuit, in and for the northern district of California, held at the court room in the city and county of San Francisco, on Monday, the 15th day of September, in the year of our Lord one thousand eight hundred and ninety.

Present: The honorable Lorenzo Sawyer, circuit judge.

THE UNITED STATES OF AMERICA
vs. } No. 3627.
MONROE SALISBURY.

The demurrer to the complaint herein heretofore argued and submitted to the court for consideration and decision, having been duly con-
51 sidered, it is ordered that said demurrer be and the same hereby is sustained, the complaint dismissed, and judgment entered herein accordingly.

52 *Judgment.*

In the circuit court of the United States, ninth judicial circuit, northern district of California.

THE UNITED STATES OF AMERICA
vs.
MONROE SALISBURY. } No. 3627.

The court having sustained the demurrer of defendant to the complaint of plaintiff and ordered that said plaintiff's complaint herein be dismissed:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the court that the plaintiff take nothing by this action, and that the defendant go hereof without day.

Judgment entered September 15, 1890.

L. S. B. SAWYER, *Clerk.*

53 I hereby certify that the foregoing is a full, true, and correct copy of an original judgment entered in the above-entitled cause.

Attest my hand and the seal of said circuit court this 15th day of September, A. D. 1890.

[SEAL.] L. S. B. SAWYER, *Clerk.*

(Endorsed:) Filed September 15, 1890. L. S. B. Sawyer, clerk.

54 *Clerk's certificate.*

In the circuit court of the United States, ninth judicial circuit, in and for the northern district of California.

UNITED STATES
vs.
M. SALISBURY. } No. 3627.

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the ninth judicial circuit, northern district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment roll in the above-entitled action.

Attest my hand and the seal of said circuit court, this 15 day of Sept., 1890.

[SEAL.] L. S. B. SAWYER,
Clerk.
By F. D. MONCKTON,
Deputy Clerk.

(Endorsed:) Judgment roll. Filed Sept. 15, 1890. L. S. B. Sawyer, clerk. By F. D. Monckton.

55 In the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California.

THE UNITED STATES OF AMERICA, plaintiff, *vs.* MONROE SALISBURY, DEFENDANT. } No. 3627.

I, L. S. B. Sawyer, clerk of the circuit court of the United States, of the ninth judicial circuit, in and for the northern district of California, do hereby certify that the foregoing fifty-four written and printed pages, numbered from 1 to 54, inclusive, are a full, true, and correct copy of the record and of the proceedings in the above and therein entitled cause, and that the same together constitute the return to the annexed writ of error.

56 Witness my hand and the seal of said circuit court, this 22d day of April, A. D. 1891.

[SEAL.] L. S. B. SAWYER, *Clerk.*

57 UNITED STATES OF AMERICA, ss:

The President of the United States of America, to the judges of the circuit court of the United States, of the ninth judicial circuit, in and for the northern district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between The United States of America, plaintiff and plaintiff in error, and Monroe Salisbury, defendant and defendant in error, a manifest error hath happened, to the great damage of the said United States of America, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the fourteenth day of May next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 16th day of March, in the year of our Lord one thousand eight hundred and ninety-one, and of the independence of the United States the one hundred and fifteenth.

[SEAL.] L. S. B. SAWYER,
Clerk of the Circuit Court of the United States for the Northern District of California.

The above writ of error is hereby allowed.

LORENZO SAWYER,
Circuit Judge, Ninth Judicial Circuit.

58 The answer of the judges of the circuit court of the United States for the northern district of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States within mentioned, at the day and place within contained in a certain schedule to this writ annexed, as within we are commanded.

By the court:

[SEAL.] L. S. B. SAWYER, *Clerk.*

(Indorsed:) No. 3627. United States Supreme Court. The United States of America, plaintiff and plaintiff in error, vs. Monroe Salisbury, defendant and defendant in error. Writ of error. Filed April 15, 1891. L. S. B. Sawyer, clerk.

59 United States of America, ss, to Monroe Salisbury, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 14th day of May, A. D. 1891, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, wherein the United States of America are plaintiffs and plaintiffs is error and you are defendant and defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Lorenzo Sawyer, judge of the circuit court of the United States in and for ninth judicial circuit, this 16th day of March, A. D. 1891, and of the independence of the United States the one hundred and fifteenth.

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

60 (Indorsed:) No. 3627. In the Supreme Court of the United States, the United States of America, plaintiff and plaintiffs in error, vs. Monroe Salisbury, defendant and defendant in error. Citation. Service of a copy of the within citation is hereby admitted this 15th day of Ap'l, 1891. E. B. Young, attorney for defendant and defendant in error. Filed April 15, 1891. L. S. B. Sawyer, clerk.

(Indorsement on cover:) Supreme Court U. S. Clerk's office. Received May 16, 1891. No. 168. 14645. The United States, plaintiff in error, vs. Monroe Salisbury. N. California. C. C. U. S. Filed May 16, 1891.